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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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SANDERINA, LLC, et al.,

Plaintiffs,

v.

GREAT AMERICAN INSURANCE
COMPANY,

Defendant.

Case No. 2:18-cv-00772-JAD-CWH

ORDER

12 Presently before the court is defendant Great American Insurance Company's motion to
13 stay discovery (ECF No. 23), filed on September 4, 2018. Plaintiffs Sanderina LLC and
14 Sanderina II, LLC ("Sanderina") filed a response and counter motion to extend discovery (ECF
15 Nos. 25, 26) on September 18, 2018. Great American filed a reply (ECF No. 27) in support of its
16 motion to stay discovery on September 24, 2018. Great American filed a response (ECF No. 32)
17 to the motion to extend discovery on September 27, 2018.

18 **I. BACKGROUND**

19 The parties are familiar with the facts of this case and the court will repeat them here only
20 as necessary. This is an insurance-coverage dispute regarding a policy that Great American
21 issued to Sanderina. Sanderina claims it sustained a loss when an unknown third party sent
22 emails to Sanderina's controller that appeared to come from Sanderina's owner and asked her to
23 transfer funds to the imposter's bank account. (Compl. (ECF No. 3-1) at ¶¶ 7-11.) Sanderina
24 alleges this scheme was facilitated by "a criminal hack[ing] into [Sanderina's] computer
25 system[.]" (*Id.* at ¶ 7.) Sanderina submitted a claim to Great American under a commercial
26 crime insurance policy, and Great American denied the claim. (*Id.* at ¶¶ 12-16.) Sanderina sued
27 Great American for breach of contract, breach of the covenant of good faith and fair dealing, and
28 unfair claims practices. (*Id.* at ¶¶ 17-41.) The insurance policy at issue covers loss resulting

1 directly from the use of a computer “to gain access to [Sanderina’s] computer system.” (Mot. to
2 Stay, Ex. 1 at 3; *see also* Compl. at ¶ 12.)

3 During discovery, Great American deposed Sanderina’s Rule 30(b)(6) representative
4 regarding Sanderina’s allegation that a criminal hacked into Sanderina’s computer system.
5 Sanderina’s representative testified as follows:

6 Q: Do you know if the imposter ever logged into a computer system that was
7 owned by Sanderina or accessed it in any way?

8 A: I don’t know the answer to that. I think we looked at it and we didn’t really see
a breach, but that doesn’t mean there wasn’t a breach.

9 Q: Did Sanderina hire any consultants, IT consultants or anything like that to
10 analyze its computer systems and determine whether or not they had been accessed
by a third party?

11 A: Yeah

12 Q: Do you know what the result of the [consultant’s] investigation was?

13 A: My understanding was that they did not find a breach.
14 . . .

15 Q: What is the factual basis for the contention that a criminal hacked into
Sanderina’s computer system?

16 A: Well, I don’t know specifically that a criminal hacked in. . . . But it was
17 important for us to point out that there was a potential hack into the system. We
just didn’t find it.

18 (Mot. to Stay, Ex. 2 at 17:4-19:5, 29:13-30:22.) Great American now moves to stay discovery
19 pending the court’s decision on its motion for summary judgment, arguing that this deposition
20 testimony establishes there is no genuine issue of material fact regarding the circumstances giving
21 rise to the claim and that there are only remaining questions of law regarding whether coverage
22 was triggered under the policy, thereby making discovery unnecessary. Alternatively, Great
23 American requests that discovery be limited to specific factual issues as the court sees fit.
24 According to Great American, Sanderina intends to depose five witnesses in different states,
25 which will result in costs that are disproportionate to the amount in controversy of \$178,759.21.

26 Sanderina opposes staying discovery, arguing Great American mischaracterizes
27 Sanderina’s Rule 30(b)(6) representative’s testimony. Specifically, Sanderina argues the witness
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1 stated Sanderina's limited investigation did not yield answers as to how the fraud was perpetrated
2 from a technical point of view, based on the following testimony:

3 A: It's hard to determine whether or not there was a hack into the system. You
4 know, it could have happened, in my opinion, one of two ways:

5 He could have hacked the system and accessed the information through the system
6 maybe knowing that I wasn't going to be there, that's a possibility. Or, I mean,
7 generally you can go on to a website and get an e-mail address which is generally
8 what these scam artists do. And they just change a letter, get a domain and they
9 fire it off. So I don't know which route the perpetrator used, but obviously he used
10 a route.

11 Q: Do you know if the imposter ever logged into a computer system that was
12 owned by Sanderina or access it in any way?

13 A: I don't know the answer to that. I think we looked at it and we didn't really see
14 a breach, but that doesn't mean there wasn't a breach.

15 (*Id.* at 17:7-24.) Sanderina further argues that significant discovery remains to be completed,
16 including requests for production of documents including the claims file, claims manuals, and
17 other guidelines for the handling of crime protection policy claims, as well as various depositions,
18 and that it will seek relief under Rule 56(d) in opposition to Great American's motion for
19 summary judgment.¹ Additionally, Sanderina countermoves to extend discovery by 90 days.

20 Great American replies that while Sanderina states it requires additional discovery,
21 Sanderina does not specifically identify the discovery it plans to conduct to explore the issue of
22 whether a third party gained direct access to its computer system. If the court denies the motion
23 to stay discovery, Great American does not oppose Sanderina's request to extend discovery by 90
24 days.

25 **II. ANALYSIS**

26 Courts have broad discretionary power to control discovery, including the decision to stay
27 discovery. *See e.g., Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). When evaluating
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¹ While Sanderina cites Rule 56(f), the court understands Sanderina to be seeking relief under Rule 56(d), which contains the content of former Rule 56(f). After the motion to stay discovery was fully briefed, Sanderina opposed the motion for summary judgment and requested that the court deny or defer ruling on the motion for summary judgment until discovery is completed. (Pl.'s Opp'n to Mot. for Summ. J. (ECF No. 35) at 26-27.)

1 whether to stay discovery, the court considers the goal of Rule 1 of the Federal Rules of Civil
2 Procedure, which directs that the rule must be “construed and administered to secure the just,
3 speedy, and inexpensive determination of every action.” *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D.
4 597, 602 (D. Nev. 2011) (citation omitted). But the Rules do not provide for an automatic stay of
5 discovery when a potentially dispositive motion is pending. *Id.* at 600–01. Thus, a pending
6 dispositive motion “is not ordinarily a situation that in and of itself would warrant a stay of
7 discovery.” *Turner Broad. Sys., Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997)
8 (quotation omitted). Nor does the fact that “discovery may involve some inconvenience and
9 expense” automatically warrant a stay of discovery. *Id.*

10 In determining whether to stay discovery, the court considers whether (1) the pending
11 motion is potentially dispositive of the entire case, or at least of the issue on which discovery is
12 sought; and (2) the potentially dispositive motion can be decided without additional discovery.
13 *Ministerio Roca Solida v. U.S. Dep’t of Fish & Wildlife*, 288 F.R.D. 500, 506 (D. Nev. 2013).
14 This analysis requires the court to take a “preliminary peek” at the potentially dispositive motion.
15 *Tradebay*, 278 F.R.D. at 603. This assessment is meant not to prejudge a motion’s outcome but,
16 rather, to accomplish the cost- and time-saving objectives of Rule 1 by evaluating the justice of
17 either permitting or delaying discovery. *Id.* Ultimately, the party seeking the stay “carries the
18 heavy burden of making a ‘strong showing’ why discovery should be denied.” *Turner*, 175
19 F.R.D. at 556 (quotation omitted).

20 After conducting its “preliminary peek” of Great American’s motion for summary
21 judgment, the court in its discretion finds that a stay of discovery is warranted. The pending
22 motion for summary judgment, if granted, will dispose of this case in its entirety. It also appears
23 the motion for summary judgment can be decided without additional discovery. This is a close
24 question given that Sanderina’s Rule 30(b)(6) representative’s testimony was somewhat
25 equivocal regarding the issue of whether a third party gained direct access to its computer system.
26 But Sanderina does not articulate the particular discovery that will be targeted at the issue of
27 whether a third party hacked into its computer system, even though it is requesting additional
28 discovery. It is unclear to the court how the additional discovery regarding the underwriting file,

1 claims procedures, or the requested depositions of Great American's Rule 30(b)(6) witness,
2 adjuster, supervisor, underwriter, and sales agents bear on the issue of whether a third party
3 hacked into its computer system. The court in its discretion therefore will stay discovery pending
4 the outcome of the motion for summary judgment.

5 Given that the court is staying discovery, it will deny Sanderina's request to extend
6 discovery without prejudice. If the United States district judge denies the motion for summary
7 judgment, the parties must meet and confer and file a revised stipulated discovery plan and
8 scheduling order within 14 days from the date of the summary-judgment order.

9 **III. CONCLUSION**

10 IT IS THEREFORE ORDERED that defendant Great American Insurance Company's
11 motion to stay discovery (ECF No. 23) is GRANTED.

12 IT IS FURTHER ORDERED that plaintiff Sanderina's countermotion to extend discovery
13 (ECF No. 26) is DENIED without prejudice.

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15 DATED: January 29, 2019

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18 C.W. HOFFMAN, JR.
19 UNITED STATES MAGISTRATE JUDGE
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